

AMENDMENT UNDER 37 C.F.R. § 1.116
U.S. APPLN. NO. 09/739,325

REMARKS

Even though Applicant does not acquiesce in the final rejection of claim 1, Applicant has canceled this claim in order to advance the prosecution of the application.

On page 4, paragraph 6, the Examiner states that claims 2 (2/1), 4 (4/3) and 5 (5/4) would be allowable if rewritten in independent form.

Applicant has rewritten claim 2 in independent form, and has amended claim 6 to make it dependent on the allowable claim 2, whereby **claims 2 and 6 now are allowable**.

Applicant requests the Examiner to hold in abeyance the rewriting of dependent claims 4 (4/3) and 5 (5/4) until the Examiner has had an opportunity to reconsider (and allow) their parent claim 3.

In this regard, Applicant respectfully traverses the rejection of claims 3 and 7 under 35 U.S.C. § 103(a) as being unpatentable (obvious) over Chapman '812 in view of Chan '613.

In the Office Action at page 4, paragraph 7, the Examiner states that:

Claim 2 is allowable over the prior art of record since the cited references taken individually or in combination fail to particularly disclose a method of determining the initial telephone call optimization stage of a duration that is selected to enable a receiving terminal to receive a sufficient number of digitized sound signal packets relating to the call to enable the size of the receive buffer for digitized sound signals to be determined on the basis of a statistical evaluation of the delays observed on the received packets.

Applicant respectfully submits that the "hardware" claim 3 essentially tracks the allowable claim 2 (2/1) and, in particular, the claim 3 paragraph beginning "A programmed

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control unit..." contains, in essence, the same above-quoted limitation which rendered claim 2 allowable.

Therefore, Applicant respectfully submits that claim 3 should be allowable for the same reason that claim 2 is allowable. (Applicant has amended the "programmed control unit" paragraph of claim 3 so that the language thereof essentially matches the corresponding language found in the allowable claim 2 (2/1). This is a voluntary clarifying amendment which does not alter the scope of claim 3.)

Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection of claim 3, and to find claim 3 allowable along with its dependent claim 7, or else explicitly explain why the amended claim 3 would not be allowable over the Chapman/Chan combination for the same reason that claim 2 is allowable over this combination.

In summary, then, Applicant respectfully requests the Examiner to reconsider and withdraw the rejections of claims 1, 3, 7 and 6, and to find the application to be in condition for allowance with all of claims 2-7; however, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is respectfully requested to **call the undersigned attorney** to discuss any unresolved issues and to expedite the disposition of the application.

Filed concurrently herewith is a Petition (with fee) for an Extension of Time of one month. Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this application, and any required fee for such extension is to be charged to Deposit Account No. 19-4880. The Commissioner is also authorized to charge any additional fees

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under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,


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